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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,461	04/15/2004	Charles Patrick Murphy		8316

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EXAMINER

BARNEY, SETH E

ART UNIT PAPER NUMBER

3752

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,461

Applicant(s)

MURPHY ET AL.

Examiner

Seth Barney

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,964,420 to Hampton.

Regarding claim 2, Hampton discloses a broadcast spreader comprising:

-a main tube (22) having an intake and a discharge end. Although Hampton references (12) as the main tube in the specification, either tube (22) or (12) can be considered the main tube and the remaining tube can be considered the secondary tube.

-a secondary tube (12) connected to the main tube.

-a material flow control (24) connected to the secondary tube.

-a control knob (25) connected to the flow control.

See Figure 1.

Regarding claim 3, the main tube and secondary tube are generally cylindrical.

Regarding claim 4, the hollow centers of the main tube and the secondary tube are in fluid communication.

Regarding claim 5, Hampton discloses that one having ordinary skill in the art can determine the optimum dimensions. See column 5 lines 27 to 34.

Regarding claim 6, the intake end of the main tube is for attachment to an external source of high velocity airflow.

Regarding claim 7, the hollow interior of the main tube receives the high velocity forced airflow.

Regarding claim 8, the hollow interior of the secondary tube is in fluid communication with the hollow interior of the main tube.

Regarding claim 9, the secondary tube is connected to the main tube at an acute angle with respect to the direction to the high velocity forced airflow. See column 4 line 57.

Regarding claim 10, the secondary tube includes a particulate matter flow. See column 5 lines 10 to 21.

Regarding claim 11, the particulate matter flow and the high velocity forced air are combined adjacent to the connection point. See Figure 1.

Regarding claim 12, the flows are combined through fluid mechanical forces, wherein the high velocity forced airflow applies a pulling force on the particulate flow.

Regarding claim 13, the fluid mechanical force is the venture effect.

Regarding claim 16, there is a hopper (15) connected to an end of the secondary tube upstream of the main tube. See Figure 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 1 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,256,241 to Mesic in view of U.S. Patent No. 6,761,157 to Bartek.

Regarding claims 1 and 17, Mesic discloses a particle spreader comprising:

- a main tube (16)
- a secondary tube (60)
- means for controlling the volume of material dispensed (64) located on the secondary tube and upstream of a connection point (near 62 or 76) of the main tube and the secondary tube.
- wherein an intake end is for connecting to a means for providing high velocity forced airflow (12) through a hollow interior of the main tube resulting in the broadcasting or spreading of the desired particulate matter that is recited from a particulate flow in the secondary tube and combined with the high velocity air flow. See Figure 1.

-so that particulate flowing through the secondary tube and the main tube do not engage with the means for providing high velocity forced airflow thereby resulting in little or no danger to the material broadcast over an area of ground.

Mesic does not expressly disclose the dimensions of the tubes angle of connection. Bartek discloses an analogous sprayer and that the dimensions of the sprayer can be optimized to achieve the desired amount of spraying. See column 3 lines 10 to 47. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dimensions of Mesic as taught by Bartek in order to achieve the desired spraying.

Regarding claim 18, the main tube is a blower that can blow leaves.

Regarding claim 19, the means for providing a particulate flow in the secondary tube is a hopper (30).

Regarding claim 20, the direction of the flow can be controlled by user operation.

6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,964,420 to Hampton as applied to claim 2 above, and further in view of U.S. Patent No. 4,630,929 to Medlin.

Hampton discloses all of the limitations of the claims except for a flexible hose. Medlin discloses a material spreader having a flexible hose (46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the flexible hose of Medlin to the sprayer of Hampton in order to control the discharge direction.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,474,327 to Mattson et al discloses a fertilizer spreader. U.S. Patent No. 6,793,563 to Daniel discloses a particle blaster assembly with a material line separated from the blower. U.S. Patent No. 4,089,441 to Cole et al. discloses a blower having a hopper.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb

A handwritten signature in black ink, appearing to read 'D. Scherbel', is positioned above the printed name and title of David A. Scherbel.

David A. Scherbel
Supervisory Patent Examiner
Group 3700